



General Assembly

Substitute Bill No. 5377

February Session, 2016

* HB05377LAB 031516 *

AN ACT CONCERNING THE PREVAILING WAGE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2016*) (a) For purposes of this
2 section:

3 (1) "Business organization" means any sole proprietorship,
4 partnership, corporation, limited liability company, association, firm or
5 other form of business or legal entity;

6 (2) "Financial assistance" means any and all forms of loans, cash
7 payments, extensions of credit, guarantees, equity investments, tax
8 abatements or any other form of financing; and

9 (3) "Project" means any construction, remodeling, refinishing,
10 refurbishing, rehabilitation, alteration or repair of any property owned
11 by a business organization.

12 (b) On and after January 1, 2017, if the state or any agency of the
13 state, including, but not limited to, the Department of Economic and
14 Community Development and Connecticut Innovations, Incorporated,
15 provides financial assistance to any business organization for any
16 project of such business organization, the state or any agency of the
17 state shall require, as a condition of providing such financial
18 assistance, that any contract entered into by the business organization

19 for such project shall contain the following provision: "The wages paid
20 on an hourly basis to any person performing the work of any
21 mechanic, laborer or worker on the work herein contracted to be done
22 and the amount of payment or contribution paid or payable on behalf
23 of each such person to any employee welfare fund, as defined in
24 subsection (i) of section 31-53 of the general statutes, as amended by
25 this act, shall be at a rate equal to the rate customary or prevailing for
26 the same work in the same trade or occupation in the town in which
27 such construction, remodeling, refinishing, refurbishing, rehabilitation,
28 alteration or repair project is being undertaken. Any contractor who is
29 not obligated by agreement to make payment or contribution on behalf
30 of such persons to any such employee welfare fund shall pay to each
31 mechanic, laborer or worker as part of such person's wages the amount
32 of payment or contribution for such person's classification on each pay
33 day."

34 (c) Any contractor or subcontractor who knowingly or wilfully
35 employs any mechanic, laborer or worker in any project receiving
36 financial assistance from the state or any agency of the state for such
37 project, at a rate of wage on an hourly basis that is less than the rate
38 customary or prevailing for the same work in the same trade or
39 occupation in the town in which such project is located, or who fails to
40 pay the amount of payment or contributions paid or payable on behalf
41 of each such person to any employee welfare fund, as defined in
42 subsection (i) of section 31-53 of the general statutes, as amended by
43 this act, or in lieu thereof to the person, as provided by subsection (b)
44 of this section, shall be fined not less than two thousand five hundred
45 dollars but not more than five thousand dollars for each offense and (1)
46 for the first violation, shall be disqualified from bidding on contracts
47 for projects for which the state or any agency of the state provides
48 financial assistance until the contractor or subcontractor has made full
49 restitution of the back wages owed to such persons and for an
50 additional six months thereafter, and (2) for subsequent violations,
51 shall be disqualified from bidding on contracts for projects for which
52 the state or any agency of the state provides financial assistance until

53 the contractor or subcontractor has made full restitution of the back
54 wages owed to such persons and for not less than an additional two
55 years thereafter. In addition, if it is found by the contracting officer
56 representing the business organization that any mechanic, laborer or
57 worker employed by the contractor or any subcontractor directly on
58 the site for the work covered by the contract has been or is being paid a
59 rate of wages less than the rate of wages required by the contract to be
60 paid as required by this section, the business organization may (A) by
61 written or electronic notice to the contractor, terminate such
62 contractor's right to proceed with the work or such part of the work as
63 to which there has been a failure to pay said required wages and to
64 prosecute the work to completion by contract or otherwise, and the
65 contractor and the contractor's sureties shall be liable to the business
66 organization for any excess costs occasioned the business organization
67 thereby, or (B) withhold payment of money to the contractor or
68 subcontractor. The contracting business organization shall, not later
69 than two days after taking such action, notify the Labor Commissioner,
70 in writing or electronically, of the name of the contractor or
71 subcontractor, the project involved, the location of the work, the
72 violations involved, the date the contract was terminated and steps
73 taken to collect the required wages.

74 (d) The Labor Commissioner may make complaint to the proper
75 prosecuting authorities for the violation of any provision of subsection
76 (c) of this section.

77 (e) The Labor Commissioner shall predetermine the prevailing rate
78 and the amount of payment or contributions paid or payable on behalf
79 of each person to any employee welfare fund, as defined in subsection
80 (i) of section 31-53 of the general statutes, as amended by this act, in
81 each town where such contract is to be performed, in the same manner
82 as provided in subsection (d) of section 31-53 of the general statutes, as
83 amended by this act.

84 Sec. 2. Section 31-53 of the general statutes is repealed and the
85 following is substituted in lieu thereof (*Effective July 1, 2016*):

86 (a) Each contract for the construction, remodeling, refinishing,
87 refurbishing, rehabilitation, alteration or repair of any public works
88 project by the state or any of its agents, or by any political subdivision
89 of the state or any of its agents, shall contain the following provision:
90 "The wages paid on an hourly basis to any person performing the
91 work of any mechanic, laborer or worker on the work herein
92 contracted to be done and the amount of payment or contribution paid
93 or payable on behalf of each such person to any employee welfare
94 fund, as defined in subsection (i) of this section, shall be at a rate equal
95 to the rate customary or prevailing for the same work in the same
96 trade or occupation in the town in which such public works project is
97 being constructed. Any contractor who is not obligated by agreement
98 to make payment or contribution on behalf of such persons to any such
99 employee welfare fund shall pay to each mechanic, laborer or worker
100 as part of such person's wages the amount of payment or contribution
101 for such person's classification on each pay day."

102 (b) Any contractor or subcontractor who knowingly or wilfully
103 employs any mechanic, laborer or worker in the construction,
104 remodeling, refinishing, refurbishing, rehabilitation, alteration or
105 repair of any public works project for or on behalf of the state or any of
106 its agents, or any political subdivision of the state or any of its agents,
107 at a rate of wage on an hourly basis that is less than the rate customary
108 or prevailing for the same work in the same trade or occupation in the
109 town in which such public works project is being constructed,
110 remodeled, refinished, refurbished, rehabilitated, altered or repaired,
111 or who fails to pay the amount of payment or contributions paid or
112 payable on behalf of each such person to any employee welfare fund,
113 as defined in subsection (i) of this section, or in lieu thereof to the
114 person, as provided by subsection (a) of this section, shall be fined not
115 less than two thousand five hundred dollars but not more than five
116 thousand dollars for each offense and (1) for the first violation, shall be
117 disqualified from bidding on contracts with the state or any political
118 subdivision until the contractor or subcontractor has made full
119 restitution of the back wages owed to such persons and for an

120 additional six months thereafter, and (2) for subsequent violations,
121 shall be disqualified from bidding on contracts with the state or any
122 political subdivision until the contractor or subcontractor has made
123 full restitution of the back wages owed to such persons and for not less
124 than an additional two years thereafter. In addition, if it is found by
125 the contracting officer representing the state or political subdivision of
126 the state that any mechanic, laborer or worker employed by the
127 contractor or any subcontractor directly on the site for the work
128 covered by the contract has been or is being paid a rate of wages less
129 than the rate of wages required by the contract to be paid as required
130 by this section, the state or contracting political subdivision of the state
131 may (A) by written or electronic notice to the contractor, terminate
132 such contractor's right to proceed with the work or such part of the
133 work as to which there has been a failure to pay said required wages
134 and to prosecute the work to completion by contract or otherwise, and
135 the contractor and the contractor's sureties shall be liable to the state or
136 the contracting political subdivision for any excess costs occasioned the
137 state or the contracting political subdivision thereby, or (B) withhold
138 payment of money to the contractor or subcontractor. The contracting
139 department of the state or the political subdivision of the state shall,
140 not later than two days after taking such action, notify the Labor
141 Commissioner, in writing or electronically, of the name of the
142 contractor or subcontractor, the project involved, the location of the
143 work, the violations involved, the date the contract was terminated,
144 and steps taken to collect the required wages.

145 (c) The Labor Commissioner may make complaint to the proper
146 prosecuting authorities for the violation of any provision of subsection
147 (b) of this section.

148 (d) For the purpose of predetermining the prevailing rate of wage
149 on an hourly basis and the amount of payment or contributions paid or
150 payable on behalf of each person to any employee welfare fund, as
151 defined in subsection (i) of this section, in each town where such
152 contract is to be performed, the Labor Commissioner shall (1) hold a

153 hearing at any required time to determine the prevailing rate of wages
154 on an hourly basis and the amount of payment or contributions paid or
155 payable on behalf of each person to any employee welfare fund, as
156 defined in subsection (i) of this section, upon any public work within
157 any specified area, and shall establish classifications of skilled,
158 semiskilled and ordinary labor, or (2) adopt and use such appropriate
159 and applicable prevailing wage rate determinations as have been made
160 by the Secretary of Labor of the United States under the provisions of
161 the Davis-Bacon Act, as amended.

162 (e) The Labor Commissioner shall determine the prevailing rate of
163 wages on an hourly basis and the amount of payment or contributions
164 paid or payable on behalf of such person to any employee welfare
165 fund, as defined in subsection (i) of this section, in each locality where
166 any such public work is to be constructed, and the agent empowered
167 to let such contract shall contact the Labor Commissioner, at least ten
168 but not more than twenty days prior to the date such contracts will be
169 advertised for bid, to ascertain the proper rate of wages and amount of
170 employee welfare fund payments or contributions and shall include
171 such rate of wage on an hourly basis and the amount of payment or
172 contributions paid or payable on behalf of each person to any
173 employee welfare fund, as defined in subsection (i) of this section, or in
174 lieu thereof the amount to be paid directly to each person for such
175 payment or contributions as provided in subsection (a) of this section
176 for all classifications of labor in the proposal for the contract. The rate
177 of wage on an hourly basis and the amount of payment or
178 contributions to any employee welfare fund, as defined in subsection
179 (i) of this section, or cash in lieu thereof, as provided in subsection (a)
180 of this section, shall, at all times, be considered as the minimum rate
181 for the classification for which it was established. Prior to the award of
182 any contract, purchase order, bid package or other designation subject
183 to the provisions of this section, such agent shall certify to the Labor
184 Commissioner, either in writing or electronically, the total dollar
185 amount of work to be done in connection with such public works
186 project, regardless of whether such project consists of one or more

187 contracts. Upon the award of any contract subject to the provisions of
188 this section, the contractor to whom such contract is awarded shall
189 certify, under oath, to the Labor Commissioner the pay scale to be used
190 by such contractor and any of the contractor's subcontractors for work
191 to be performed under such contract.

192 (f) Each employer subject to the provisions of this section, ~~[or]~~
193 ~~section 31-54 or section 1 of this act~~ shall (1) keep, maintain and
194 preserve such records relating to the wages and hours worked by each
195 person performing the work of any mechanic, laborer and worker and
196 a schedule of the occupation or work classification at which each
197 person performing the work of any mechanic, laborer or worker on the
198 project is employed during each work day and week in such manner
199 and form as the Labor Commissioner establishes to assure the proper
200 payments due to such persons or employee welfare funds under this
201 section, ~~[or] section 31-54 or section 1 of this act~~, regardless of any
202 contractual relationship alleged to exist between the contractor and
203 such person, provided such employer shall have the option of keeping,
204 maintaining and preserving such records in an electronic format, and
205 (2) submit monthly to the contracting agency, ~~or the state or any~~
206 ~~agency of the state providing financial assistance pursuant to section 1~~
207 ~~of this act~~, by mail, electronic mail or other method accepted by such
208 agency ~~or the state or any agency of the state~~, a certified payroll that
209 shall consist of a complete copy of such records accompanied by a
210 statement signed by the employer that indicates (A) such records are
211 correct; (B) the rate of wages paid to each person performing the work
212 of any mechanic, laborer or worker and the amount of payment or
213 contributions paid or payable on behalf of each such person to any
214 employee welfare fund, as defined in subsection (i) of this section, are
215 not less than the prevailing rate of wages and the amount of payment
216 or contributions paid or payable on behalf of each such person to any
217 employee welfare fund, as determined by the Labor Commissioner
218 pursuant to subsection (d) of this section, and not less than those
219 required by the contract to be paid; (C) the employer has complied
220 with the provisions of this section, ~~[and] section 31-54 and section 1 of~~

221 this act; (D) each such person is covered by a workers' compensation
222 insurance policy for the duration of such person's employment, which
223 shall be demonstrated by submitting to the contracting agency the
224 name of the workers' compensation insurance carrier covering each
225 such person, the effective and expiration dates of each policy and each
226 policy number; (E) the employer does not receive kickbacks, as defined
227 in 41 USC 52, from any employee or employee welfare fund; and (F)
228 pursuant to the provisions of section 53a-157a, the employer is aware
229 that filing a certified payroll which the employer knows to be false is a
230 class D felony for which the employer may be fined up to five
231 thousand dollars, imprisoned for up to five years, or both. This
232 subsection shall not be construed to prohibit a general contractor from
233 relying on the certification of a lower tier subcontractor, provided the
234 general contractor shall not be exempted from the provisions of section
235 53a-157a if the general contractor knowingly relies upon a
236 subcontractor's false certification. Notwithstanding the provisions of
237 section 1-210, the certified payroll shall be considered a public record
238 and every person shall have the right to inspect and copy such records
239 in accordance with the provisions of section 1-212. The provisions of
240 subsections (a) and (b) of section 31-59 and sections 31-66 and 31-69
241 that are not inconsistent with the provisions of this section, [or] section
242 31-54 or section 1 of this act apply to this section. Failing to file a
243 certified payroll pursuant to subdivision (2) of this subsection is a class
244 D felony for which the employer may be fined up to five thousand
245 dollars, imprisoned for up to five years, or both.

246 (g) Any contractor who is required by the Labor Department to
247 make any payment as a result of a subcontractor's failure to pay wages
248 or benefits, or any subcontractor who is required by the Labor
249 Department to make any payment as a result of a lower tier
250 subcontractor's failure to pay wages or benefits, may bring a civil
251 action in the Superior Court to recover no more than the damages
252 sustained by reason of making such payment, together with costs and
253 a reasonable attorney's fee.

254 (h) The provisions of this section do not apply where the total cost
 255 of all work to be performed by all contractors and subcontractors in
 256 connection with new construction of any public works project is less
 257 than four [hundred thousand] million dollars or where the total cost of
 258 all work to be performed by all contractors and subcontractors in
 259 connection with any remodeling, refinishing, refurbishing,
 260 rehabilitation, alteration or repair of any public works project is less
 261 than [one hundred thousand] two million dollars.

262 (i) As used in this section, [and] section 31-54 and section 1 of this
 263 act, "employee welfare fund" means any trust fund established by one
 264 or more employers and one or more labor organizations or one or
 265 more other third parties not affiliated with the employers to provide
 266 from moneys in the fund, whether through the purchase of insurance
 267 or annuity contracts or otherwise, benefits under an employee welfare
 268 plan; provided such term shall not include any such fund where the
 269 trustee, or all of the trustees, are subject to supervision by the Banking
 270 Commissioner of this state or any other state or the Comptroller of the
 271 Currency of the United States or the Board of Governors of the Federal
 272 Reserve System, and "benefits under an employee welfare plan" means
 273 one or more benefits or services under any plan established or
 274 maintained for persons performing the work of any mechanics,
 275 laborers or workers or their families or dependents, or for both,
 276 including, but not limited to, medical, surgical or hospital care
 277 benefits; benefits in the event of sickness, accident, disability or death;
 278 benefits in the event of unemployment, or retirement benefits.

This act shall take effect as follows and shall amend the following sections:

Section 1	July 1, 2016	New section
Sec. 2	July 1, 2016	31-53

Statement of Legislative Commissioners:

In Section 1(c) and Section 2(b), the statutory reference for employee welfare funds was added for clarity and consistency and in Section

2(f)(2), "or the state or any agency of the state" was added for clarity and consistency.

LAB *Joint Favorable Subst. -LCO*